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Date: 1/19/2010 Name: Allen R. Baum Signature: Allen R. Baum

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Albane AUDEMER et al.

U.S. Patent No. 7,618,747

**Issue Date : November 17, 2009**

Serial No. 10/518,560

**Filing Date: August 31, 2005**

**Title: Carbon-Coated Li-Containing Powders and Process for Production Thereof**

)  
)  
)  
) Examiner: **Muhammad Siddiquee**  
)  
) Group Art Unit No. **1795**

**REQUEST FOR RECONSIDERATION OF**  
**PATENT TERM ADJUSTMENT**  
**PURSUANT TO 37 C.F.R. § 1.705(d)**

Mail Stop Patent Ext  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This petition is filed in connection with the recent Court of Appeals for the Federal Circuit decision in *Wyeth, et al. v. Kappos*. U.S. Patent No. 7,618,747 was issued on November 17, 2009. Pursuant to 35 U.S.C. § 154(b) the United States Patent and Trademark Office has calculated a patent term adjustment of 532 days. A copy of the issue notification for U.S. patent number 7,618,747 is included herewith as Exhibit A.

Applicants' Attorney believes that the patent term adjustment should be 975 days. For the reasons stated herein, reconsideration of this patent term adjustment is respectfully requested pursuant to 37 C.F.R. 1.705(d). Please charge the petition fee pursuant to 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925. A duplicate copy of this Petition is attached.

The patent term adjustment for U.S. patent number 7,618,747 was calculated by the U.S. Patent and Trademark Office based on activities and associated dates detailed in the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Applicants' Attorney believes that errors and/or omissions in the calculation and/or the PAIR system Patent Term Adjustment History resulted in an incorrect patent term adjustment for U.S. patent number 7,618,747 as described in detail below. Pursuant to 37 C.F.R. §1.705(d), this request for reconsideration is being filed within two months of the issue date of the above-referenced patent. Note that U.S. patent number 7,618,747 is not subject to a terminal disclaimer. In addition, there were no circumstances during the prosecution of the application resulting in the patent that constitute a failure of the Applicants to engage in reasonable efforts to conclude processing or examination of the present application as set forth in 37 C.F.R. §1.704.

**Period of adjustment for activities prior to mailing of Notice of Allowance**

As detailed in the Patent Term Adjustment History that is attached as Exhibit B, the patent term adjustment indicated on the Notice of Allowance was 532 days.

**Period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1)**

The period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1) is the number of days in the period beginning on the day ("the 14 month date") after that date that is fourteen months after the

date on which the application was filed under 35 U.S.C. §111(a) or fulfilled the requirements under 35 U.S.C. §371 and ending on the date of either an action under 35 U.S.C. §132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

The requirements of 35 U.S.C. §371 in the present application were fulfilled on August 31, 2005. The 14 month date specified in 37 C.F.R. § 1.703(a)(1) is October 31, 2006. A First Office Action was mailed on April 15, 2008. As set forth in Exhibit B, the difference between the 14 month date and the date of mailing of the First Office Action is 532 days. This period of time constitutes the “A period” or “A delay” under 35 U.S.C. § 154(b)(1)(A)(i)-(iv).

**Period of adjustment pursuant to 37 C.F.R. § 1.703(b)**

The period of adjustment pursuant to 37 C.F.R. § 1.703(b) is the number of days in the period beginning on the day (“the 3 year date”) after the date that is three years after the date on which the application was filed pursuant to 35 U.S.C. § 111(a).

The requirements of 35 U.S.C. §371 in the present application were fulfilled on August 31, 2005, as evidenced by the official filing receipt attached as Exhibit C. The 3 year date determined pursuant to 37 C.F.R. § 1.703(b) is August 31, 2008. U.S. Patent Number 7,618,747 was issued on November 17, 2009, which is 443 days beyond the 3 year date. This period of time constitutes the “B period” or “B delay” under 35 U.S.C. § 154(b)(1)(B).

**Reduction in period of adjustment under 37 C.F.R. § 1.703(f)**

The period of adjustment under 37 C.F.R. § 1.703(f) is the sum of the periods calculated under 37 C.F.R. § 1.703(a) – (e), to the extent they are not overlapping.

The period of adjustment under 1.703(a)(1) is 532 days. The period of adjustment under 1.703(b) is 443 days. The First Office Action of April 15, 2008, was mailed prior to the “3 year

date" of October 31, 2008. Therefore, the overlap of these two periods is 0 days. Accordingly, the total period of adjustment pursuant to 37 C.F.R. § 1.703 is 532 days + 443 days = 975 days.

**Total patent term adjustment**

Based on the foregoing, we believe that the correct patent term adjustment for U.S. Patent No. 7,618,747 should be the 532 days currently awarded and an additional 443 days due to exceeding the 3 year date for a total patent term adjustment of 975 days. As indicated in Exhibit B, total delay by Applicants' Attorney was 0 days.

It is respectfully asserted that the patent term adjustment determined by the U.S. Patent and Trademark Office for U.S. Patent No. 7,618,747 is not correct. Accordingly, Applicants' Attorney respectfully requests the U.S. Patent and Trademark office to reconsider and make revisions to the PAIR system Patent Term Adjustment History in view of the previous remarks to award 975 days. In addition, it is respectfully requested that the patent term adjustment be recalculated by the U.S. Patent and Trademark Office in view of the above remarks. Moreover, it is respectfully requested that a Certificate of Correction be issued for U.S. Patent No. 7,618,747 to indicate that 975 days of patent term adjustment have been awarded. Office personnel are invited to contact Applicants' Attorney via telephone if such communication would be beneficial in fulfilling this request.

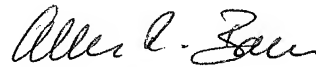
Applicants believe that the Office did not honor the provisions of 35 U.S.C. § 154 by not counting the non-overlapping 443 day PTO delay set forth above. Applicants are unaware of any statutory or legislative bases for the Office's failure to consider this 443 day delay in the overall term adjustment. Applicants believe that the Rules set forth by the PTO on this issue appear to

be contrary to the specific language of this statute and the intended purpose set forth by Congress.

Applicants' position further finds support in a recent Federal Circuit Court of Appeals decision (*Wyeth, et al. v. Kappos*, Case 2009-1120, January 7, 2010). Like the plaintiffs in *Wyeth, et al. v. Kappos*, Applicants similarly contend that the A delay and B delay in the instant case constitute non-overlapping periods that should be included in the patent term adjustment in accordance with the statute and legislative history pertaining to 35 U.S.C. § 154.

Applicants reserve the right to appeal a denial of our petition in view of the *Wyeth, et al. v. Kappos* case discussed above.

Respectfully submitted,



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Allen R. Baum  
Registration No. 36,086  
Agent for Applicants

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Morrisville, North Carolina 27560  
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742486v1

# EXHIBIT A

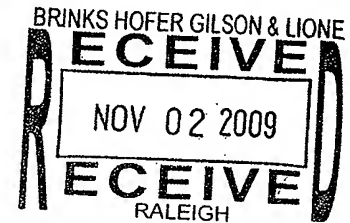


UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,560	11/17/2009	7618747	13810-12	6787

45473 7590 10/28/2009  
BRINKS, HOFER, GILSON & LIONE  
P.O. BOX 1340  
MORRISVILLE, NC 27560



ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

**Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**  
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 532 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Application Assistance Unit (AAU) of the Office of Data Management (ODM) at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Albane Audemer, Lier, BELGIUM;  
Calin Wurm, Amiens, FRANCE;  
Mathieu Morcrette, Amiens, FRANCE;  
Sylvain Gwizdala, Brienon sur Armancon, FRANCE;  
Christain Masquelier, Amiens, FRANCE;

# EXHIBIT B



10/518,560	CARBON-COATED LI-CONTAINING POWDERS AND PROCESS FOR PRODUCTION THEREOF	01-19-2010::11:16:34
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/518,560

Filing or 371(c) Date:	08-31-2005	USPTO Delay (PTO) Delay (days):	532
Issue Date of Patent:	11-17-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	0
Post-Issue Petitions (days):	+0	Total PTA (days):	532
USPTO Adjustment(days):	+0	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
10-28-2009	PTA 36 Months		
11-17-2009	Patent Issue Date Used in PTA Calculation		
10-06-2009	Dispatch to FDC		
10-06-2009	Application Is Considered Ready for Issue		
09-30-2009	Issue Fee Payment Verified		
09-30-2009	Issue Fee Payment Received		
08-14-2009	Mail Notice of Allowance		
08-13-2009	Document Verification		
08-13-2009	Notice of Allowance Data Verification Completed		
08-13-2009	Case Docketed to Examiner in GAU		
08-13-2009	Examiner's Amendment Communication		
05-01-2009	Information Disclosure Statement considered		
05-01-2009	Information Disclosure Statement (IDS) Filed		
06-12-2009	Date Forwarded to Examiner		
05-01-2009	Response after Non-Final Action		
05-01-2009	Information Disclosure Statement (IDS) Filed		
04-01-2009	Mail Pre-Exam Notice		
02-03-2009	Mail Non-Final Rejection		
02-02-2009	Non-Final Rejection		
11-21-2008	Date Forwarded to Examiner		
11-14-2008	Response to Election / Restriction Filed		
10-23-2008	Mail Restriction Requirement		
10-22-2008	Requirement for Restriction / Election		
08-18-2008	Date Forwarded to Examiner		
07-11-2008	Response after Non-Final Action		
04-15-2008	Mail Non-Final Rejection	532	
04-14-2008	Non-Final Rejection	↑	
08-31-2005	Information Disclosure Statement considered	↑	
04-01-2008	Case Docketed to Examiner in GAU	↑	
10-09-2007	Case Docketed to Examiner in GAU	↑	
09-26-2007	Case Docketed to Examiner in GAU	↑	

08-31-2005	Information Disclosure Statement (IDS) Filed	↑
08-31-2005	Information Disclosure Statement (IDS) Filed	↑
08-31-2005	Miscellaneous Incoming Letter	↑
11-23-2005	IFW TSS Processing by Tech Center Complete	↑
11-23-2005	Case Docketed to Examiner in GAU	↑
11-18-2005	Cleared by OIPE CSR	↑
11-18-2005	Cleared by OIPE CSR	↑
11-18-2005	Cleared by OIPE CSR	↑
11-18-2005	Cleared by OIPE CSR	↑
08-31-2005	371 Completion Date	↑
09-29-2005	Application Dispatched from OIPE	
09-29-2005	Notice of DO/EO Acceptance Mailed	
08-31-2005	Additional Application Filing Fees	
08-31-2005	Information Disclosure Statements	
08-31-2005	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	

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**Close Window**

# EXHIBIT C

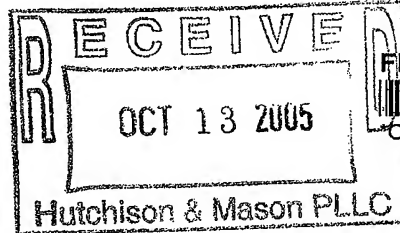


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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/518,560	08/31/2005	2838	1330	UMC.10018	5	12	4

45473  
HUTCHISON & MASON PLLC  
PO BOX 31686  
RALEIGH, NC 27612



CONFIRMATION NO. 6787

FILING RECEIPT



OC000000017064450\*

Date Mailed: 09/29/2005

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

**Applicant(s)**

Albane Audemer, Lier, BELGIUM;  
Calin Wurm, Amiens, FRANCE;  
Mathieu Morcrette, Amiens, FRANCE;  
Sylvain Gwizdala, Brienon sur Armancon, FRANCE;  
Christain Masquelier, Amiens, FRANCE;

**Power of Attorney:** The patent practitioners associated with Customer Number 45473.

**Domestic Priority data as claimed by applicant**

This application is a 371 of PCT/EP03/06628 06/19/2003  
which claims benefit of 60/392,978 07/02/2002

**Foreign Applications**

EUROPEAN PATENT OFFICE (EPO) 02291562.3 06/21/2002

**Projected Publication Date:** To Be Determined - pending completion of Security Review

**Non-Publication Request:** No

**Early Publication Request:** No

**Title**

Carbon-coated li-containing powders and process for production thereof

**Preliminary Class**

320

**PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES**

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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**Title 35, United States Code, Section 184**

**Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof

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#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).